

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 221

SENATE BILL 1314

AN ACT

AMENDING SECTIONS 25-103, 25-324 AND 25-408, ARIZONA REVISED STATUTES;
RELATING TO DOMESTIC RELATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-103, Arizona Revised Statutes, is amended to
3 read:

4 25-103. Purposes of title; application of title

5 A. It is declared that the public policy of this state and the general
6 purposes of this title are:

- 7 1. To promote strong families;
- 8 2. To promote strong family values.

9 B. IT ALSO IS THE DECLARED PUBLIC POLICY OF THIS STATE AND THE GENERAL
10 PURPOSE OF THIS TITLE THAT ABSENT EVIDENCE TO THE CONTRARY, IT IS IN A
11 CHILD'S BEST INTEREST:

12 1. TO HAVE SUBSTANTIAL, FREQUENT, MEANINGFUL AND CONTINUING PARENTING
13 TIME WITH BOTH PARENTS.

14 2. TO HAVE BOTH PARENTS PARTICIPATE IN DECISION-MAKING ABOUT THE
15 CHILD.

16 C. A COURT SHALL APPLY THE PROVISIONS OF THIS TITLE IN A MANNER THAT
17 IS CONSISTENT WITH THIS SECTION.

18 Sec. 2. Section 25-324, Arizona Revised Statutes, is amended to read:

19 25-324. Attorney fees

20 A. The court from time to time, after considering the financial
21 resources of both parties and the reasonableness of the positions each party
22 has taken throughout the proceedings, may order a party to pay a reasonable
23 amount to the other party for the costs and expenses of maintaining or
24 defending any proceeding under this chapter or chapter 4, article 1 of this
25 title. On request of a party or another court of competent jurisdiction, the
26 court shall make specific findings concerning the portions of any award of
27 fees and expenses that are based on consideration of financial resources and
28 that are based on consideration of reasonableness of positions. The court
29 may make these findings before, during or after the issuance of a fee award.

30 B. IF THE COURT DETERMINES THAT A PARTY FILED A PETITION UNDER ONE OF
31 THE FOLLOWING CIRCUMSTANCES, THE COURT SHALL AWARD REASONABLE COSTS AND
32 ATTORNEY FEES TO THE OTHER PARTY:

- 33 1. THE PETITION WAS NOT FILED IN GOOD FAITH.
- 34 2. THE PETITION WAS NOT GROUNDED IN FACT OR BASED ON LAW.
- 35 3. THE PETITION WAS FILED FOR AN IMPROPER PURPOSE, SUCH AS TO HARASS
36 THE OTHER PARTY, TO CAUSE AN UNNECESSARY DELAY OR TO INCREASE THE COST OF
37 LITIGATION TO THE OTHER PARTY.

38 ~~B.~~ C. For the purpose of this section, costs and expenses may include
39 attorney fees, deposition costs and other reasonable expenses as the court
40 finds necessary to the full and proper presentation of the action, including
41 any appeal.

42 ~~C.~~ D. The court may order all amounts paid directly to the attorney,
43 who may enforce the order in the attorney's name with the same force and
44 effect, and in the same manner, as if the order had been made on behalf of
45 any party to the action.

1 Sec. 3. Section 25-408, Arizona Revised Statutes, is amended to read:
2 25-408. Rights of noncustodial parent; parenting time;
3 relocation of child; exception; enforcement; access
4 to records

5 A. A parent who is not granted custody of the child is entitled to
6 reasonable parenting time rights to ensure that the minor child has frequent
7 and continuing contact with the noncustodial parent unless the court finds,
8 after a hearing, that parenting time would endanger seriously the child's
9 physical, mental, moral or emotional health.

10 B. If by written agreement or court order both parents are entitled to
11 custody or parenting time and both parents reside in the state, at least
12 sixty days' advance written notice shall be provided to the other parent
13 before a parent may do either of the following:

- 14 1. Relocate the child outside the state.
15 2. Relocate the child more than one hundred miles within the state.

16 C. The notice required by this section shall be made by certified
17 mail, return receipt requested, or pursuant to the Arizona rules of family
18 law procedure. THE COURT SHALL SANCTION a parent who, WITHOUT GOOD CAUSE,
19 does not comply with the notification requirements of this subsection ~~is~~
20 ~~subject to court sanction~~. The court may impose a sanction that will affect
21 custody or parenting time only in accordance with the child's best interests.

22 D. Within thirty days after notice is made the nonmoving parent may
23 petition the court to prevent relocation of the child. After expiration of
24 this time any petition or other application to prevent relocation of the
25 child may be granted only on a showing of good cause. This subsection does
26 not prohibit a parent who is seeking to relocate the child from petitioning
27 the court for a hearing, on notice to the other parent, to determine the
28 appropriateness of a relocation that may adversely affect the other parent's
29 custody or parenting time rights.

30 E. Subsection B of this section does not apply if provision for
31 relocation of a child has been made by a court order or a written agreement
32 of the parties that is dated within one year of the proposed relocation of
33 the child.

34 F. Pending the determination by the court of a petition or application
35 to prevent relocation of the child:

36 1. A parent with sole custody or a parent with joint custody and
37 primary physical custody who is required by circumstances of health or safety
38 or employment of that parent or that parent's spouse to relocate in less than
39 sixty days after written notice has been given to the other parent may
40 temporarily relocate with the child.

41 2. A parent who shares joint custody and substantially equal physical
42 custody and who is required by circumstances of health or safety or
43 employment of that parent or that parent's spouse to relocate in less than
44 sixty days after written notice has been given to the other parent may

1 temporarily relocate with the child only if both parents execute a written
2 agreement to permit relocation of the child.

3 G. The court shall determine whether to allow the parent to relocate
4 the child in accordance with the child's best interests. The burden of
5 proving what is in the child's best interests is on the parent who is seeking
6 to relocate the child. To the extent practicable the court shall also make
7 appropriate arrangements to ensure the continuation of a meaningful
8 relationship between the child and both parents.

9 H. The court shall not deviate from a provision of any parenting plan
10 or other written agreement by which the parents specifically have agreed to
11 allow or prohibit relocation of the child unless the court finds that the
12 provision is no longer in the child's best interests. There is a rebuttable
13 presumption that a provision from any parenting plan or other written
14 agreement is in the child's best interests.

15 I. In determining the child's best interests the court shall consider
16 all relevant factors including:

17 1. The factors prescribed under section 25-403.

18 2. Whether the relocation is being made or opposed in good faith and
19 not to interfere with or to frustrate the relationship between the child and
20 the other parent or the other parent's right of access to the child.

21 3. The prospective advantage of the move for improving the general
22 quality of life for the custodial parent or for the child.

23 4. The likelihood that the parent with whom the child will reside
24 after the relocation will comply with parenting time orders.

25 5. Whether the relocation will allow a realistic opportunity for
26 parenting time with each parent.

27 6. The extent to which moving or not moving will affect the emotional,
28 physical or developmental needs of the child.

29 7. The motives of the parents and the validity of the reasons given
30 for moving or opposing the move including the extent to which either parent
31 may intend to gain a financial advantage regarding continuing child support
32 obligations.

33 8. The potential effect of relocation on the child's stability.

34 J. The court shall assess attorney fees and court costs against either
35 parent if the court finds that the parent has unreasonably denied, restricted
36 or interfered with court-ordered parenting time.

37 K. Pursuant to section 25-403.06, the noncustodial parent is entitled
38 to have access to documents and other information about the child unless the
39 court finds that access would endanger seriously the child's or the custodial
40 parent's physical, mental, moral or emotional health.

APPROVED BY THE GOVERNOR MAY 3, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2010.